

REMARKS

This is in response to the Office Action mailed 10/14/2004.

Pending Claims

As an initial matter, it appears there may be some confusion regarding the pending claims. The Office Action addresses "42, 44-87". However, if Applicant understands correctly, claims 45 and 54 were no longer pending by virtue of the amendment filed September 23, 2003, which is believed to have been entered with the RCE. The limitations of claim 54 were incorporated into claim 1 based on applicant's understanding of the Office Action mailed 6-23-2003.

Further, claim 53 has also been canceled by the present amendment. Accordingly, the pending claims should now be: 42, 44, 46-52, and 55-87.

Obviousness-type Double Patenting

Applicant respectfully requests reconsideration of the rejection under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-41 of U.S. Pat. No. 5,569,450 (Duan).

The present claims distinguish over Duan in that, among other things, they require the biocompatible polymer to be present in sufficient amounts to provide sustained release, which is neither disclosed nor claimed by Duan. Duan was addressed in the present application at page 3, lines 18-22, as follows:

U.S. Patent No. 5,569,450 (Duan et al.) discloses that biocompatible oligomers such as oligohydroxycarboxylic acids are useful as dispersing aids to help maintain particles as a suitable suspension. However, it does not disclose formulations of such compounds providing sustained drug release or as a drug solubilizing and/or stabilizing aid.

Objection under 37 CFR 1.75(c).

Claim 53 was objected to as being in improper dependent form. While Applicant respectfully disagrees— because it is disclosed that biocompatible polymers can be formed by a

variety of polymerization reactions, including condensation or ring-opening polymerization reactions (page 4, lines 14–15)—the issue has been obviated by cancellation of claim 53.

In view of the above, Applicant believes that the application is now in condition for allowance. Reconsideration and favorable action are therefore requested.

Respectfully submitted,

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Date

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